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E.O. 12958: N/A

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SUBJECT: CHEMICAL WEAPONS CONVENTION (CWC) - SCENESETTER  
FOR THE 35TH EXECUTIVE COUNCIL

REF: 11/12 PARK E-MAIL TO DEL

This is CWC-121-03.

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SUMMARY AND COMMENT  
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1. (SBU) As the October Conference of States Parties resolved most of the key issues facing the OPCW (budget, destruction deadline extensions, action plans), the focus of the December 2-5 Executive Council meeting will be on a number of technical, particularly industrial, issues. There have been initial steps to put meat on the bones of the action plans for Article VII and universality, and the U.S. should emphasize on the margins of EC-35 the importance it places on robust implementation of these plans. Some of the Latin American ambassadors have raised the issue of the lawsuit by former DG Bustani with Ambassador Javits, but did so with little gusto. Thus, there is no expectation that this will be a hot topic at the EC, particularly as the OPCW is in the process of pursuing an appeal to the ILO Administrative Tribunal of its award to Bustani.

2. (SBU) Comment: The larger issue for consideration, which we have highlighted and discussed with Washington, is the agenda for the OPCW for the coming year. Indeed, DG Pfirter has asked to see Amb. Javits in the next few days to discuss this exact question. This is an opportune time for the U.S. to stamp its mark on the OPCW priorities for 2004, whether in actively pursuing implementation of action plans, focusing on administrative and budgetary issues, or pressing for new initiatives in other areas. None of these is mutually exclusive, but a clear prioritization of issues would not only be in the interest of the U.S., but would generate more productive work at the OPCW. And in that respect, EC-35 provides an excellent opportunity to gauge the priorities of other delegations and the leadership of the Technical Secretariat. End Summary and Comment.

3. (U) The following is a general list of topics drawn from the provisional agenda and also highlighted in the referenced E-mail.

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AGENDA ITEM FIVE: DETAILED PLANS FOR DESTRUCTION OF CW  
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4. (U) The agreed plan for destruction of CW at Aberdeen (EC-32/DEC/CRP.2) will likely be on the agenda. Para 8 comments with regard to Aberdeen FA apply to the CP as well.

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AGENDA ITEM SIX: CONVERSION OF CWPFS  
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5. (U) In connection with Volgograd, there are notifications of changes at a former DF production facility (EC-34/DG.1) as well as notifications of changes at a former facility for preparation for filling of non-chemical parts (EC-34/DG.3\*).

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DESTRUCTION/CONVERSION PLANS  
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6. (U) The U.S. combined plan for QL facility at Pine Bluff Arsenal (EC-35/DEC/CRP.2 and EC-35/DG.3) as well as the Russian combined plan for conversion and verification of VX production/filling facility at Novocheboksarsk (EC-32/DG.8 and EC-32/DEC/CRP.8) will likely be on the agenda.

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AGENDA ITEM SEVEN: NOTIFICATIONS OF CHANGES AT FORMER  
CHEMICAL WEAPONS PRODUCTION FACILITIES  
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17. (U) No detailed information yet on what may fall under this agenda item.

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AGENDA ITEM EIGHT: FACILITY AGREEMENTS  
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18. (U) Facility agreements for Aberdeen (EC-32/DEC/CRP.6) and Gorniy (EC-35/DEC/CRP.1) are on the agenda. Delegation has received no indication from the Russians that there has been any change to their position that they cannot join consensus on the Aberdeen FA. On the last occasion on which this subject was discussed, Russia indicated again that the Aberdeen FA's inclusion of an area of a commercial chemical facility as a declared, non-contiguous part of the CWDF is politically "unacceptable". The Russian delegation stated that Russia's reaffirmation that all final destruction of nerve agent would occur at Shchuchye did nothing to alleviate its stated concerns over Aberdeen. As Del understands the situation, therefore, barring a reassessment by Russia of their position, we are at a stalemate over this document. Del notes that we have not received a response from either the Russians or the Technical Secretariat with regard to the questions and comments we raised over the Gorniy FA.

19. (U) Delegation requests guidance, based on the feedback/responses provided by the Korean and Belgian delegations as well as further comment from the TS, on whether the U.S. is now in a position to join consensus on these SP's respective Schedule One Facility Agreements. If problems/issues remain, delegation requests to be advised of them at the earliest opportunity in order to address them before or during the Session in an effort to finalize these documents.

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AGENDA ITEM NINE: INDUSTRY ISSUES  
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110. (U) At this point, it does not appear that the dispute with Germany regarding captive use will be resolved by EC-35. Del has reported separately on the efforts to work with the U.K. facilitator to find some type of accommodation on the German concerns that Schedule 1 captive use be addressed in a manner that does not block EC approval of the captive use decision as applied to Schedule 2 and 3 chemicals. The German del has provided the UK and U.S. Del with a draft study to back up its position (e-mailed to AC/CB). However the political realities appear to be that many countries would object to any captive use proposal that includes Schedule 1 chemicals. As a result of trilateral discussions between U.S., UK and Germany, the facilitator has proposed EC report language for the EC to "decide to hold open-ended consultations to consider the captive use of Schedule 1 chemicals, with a view to reaching a conclusion by the Ninth Conference, and noted that the meeting of Government experts with the Scientific Advisory Board, to be held on 28-30 January 2004, would also provide an opportunity to explore this issue." Such an approach would alleviate German concerns that the issue be considered, without stalling the captive use decision as written. The Germans have yet to commit to consensus even with this proposal.

111. (U) Also on the agenda is the resolution of discrepancies regarding import and export declarations. During the last EC, Del and the UK circulated text to address the need for the TS and States Parties to continue efforts to clarify the significant discrepancies in trade of 2A/2A\* chemicals for which no corresponding export, production, processing or consumption declarations were submitted. This text was not accepted, particularly by those delegations implicated in the report. The UK has circulated, to a small number of delegations, alternative text for this EC they believe may be acceptable, as follows:

"A number of delegations raised the Discussion Paper submitted to the 34th Session of the Executive Council by the Technical Secretariat on Overcoming Discrepancies in the Declarations of Imports and exports of Schedule 2 and 3 Chemicals (Ref: EC-34/S/1). The Council called upon the Technical Secretariat to ensure the necessary procedures were in place for recording and following up clarification requests. The Council also called upon States Parties to co-operate with the Technical Secretariat in its efforts to clarify to the extent feasible the discrepancies identified in paragraph 3.6 of the Discussion Paper. It requested that the Technical Secretariat, in consultation with the States Parties concerned, follow up the outstanding clarification requests relating to these discrepancies and report back on the results."

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AGENDA ITEM TEN: CHANGES TO THE LIST  
OF APPROVED EQUIPMENT AND TECHNICAL  
SPECIFICATIONS FOR APPROVED EQUIPMENT  
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112. (U) No information yet on what may appear under this agenda item.

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AGENDA ITEM ELEVEN: LIST OF NEW VALIDATED DATA FOR INCLUSION  
IN THE OPCW CENTRAL ANALYTICAL DATABASE  
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113. (U) No information yet on what may appear under this agenda item.

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AGENDA ITEM TWELVE: AGREEMENTS ON THE PRIVILEGES AND  
IMMUNITIES OF THE OPCW  
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114. (U) No information yet on what may appear under this agenda item.

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AGENDA ITEM THIRTEEN: FINANCIAL ISSUES  
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115. (U) There has been continued discussion on the general topic of providing a financial "cushion" so that the TS can handle unexpected expenses or fluctuations in income. While the discussion at the CSP focused on the Stabilization Fund, the Administration Division has been seized with the idea of an major expansion of the Working Capital Fund and a substantial increase in the period in which replenishment of the WCF would be required.

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AGENDA ITEM FOURTEEN: IMPLEMENTATION OF THE HEADQUARTERS  
AGREEMENT  
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116. (U) No information yet on what may be covered under this item.

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AGENDA ITEM 15: ANY OTHER BUSINESS - BUSTANI  
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117. (SBU) At a recent lunch hosted by Ambassador Javits, a number of Ambassadors from Latin American countries raised the ILO Administrative Tribunal judgment in favor of former DG Bustani. However, they did it in almost apologetic tones, and even the Brazilian Ambassador was taciturn in making his points. Ambassador Javits emphasized the U.S. commitment to the rule of law, and the importance of the OPCW exhausting all legal options. The OPCW is in the process of filing its appeal on the issue of material damages awarded Bustani by the ILOAT, although this may not be widely known among delegations. With this appeal under way and the palpable reluctance of even the Brazilian Ambassador to pursue this case, the Bustani issue likely will not even rise to the chatter level at the EC.

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IMPLEMENTATION OF ARTICLE XI  
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118. (SBU) Facilitator Norma Suarez/Mexico likely will report that she has been unable to make progress on implementation of Article XI in spite of holding multiple bilateral and small group sessions.

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STATUS OF IMPLEMENTATION  
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119. (U) There are three items in this category. The first is a draft decision on the clarification of declarations. The second is a proposed addition of an item to the list of approved inspection equipment (EC-35/DG.1). The third is a proposed revision of technical specifications for two items of equipment (EC-35/DG.2).

120. (U) Javits sends.  
SOBEL